In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 591

SOUTH PUERTO RICO SUGAR COMPANY TRADING CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Claims (Pet., Appendix A), is reported at 334 F. 2d 622.

JURISDICTION

The final judgment of the Court of Claims was entered on July 17, 1964. The petition for a writ of certiorari was filed on October 15, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Under a statute authorizing the President to replace the Cuban sugar quota with imports from other countries in specified amounts "subject to such terms

and conditions as he deems appropriate under the prevailing circumstances," the President authorized additional imports from the Dominican Republic only upon payment of a fee representing the difference between the United States and the world market prices. The question is whether the President had power to impose this fee.

STATUTE INVOLVED

Public Law 86–592, July 6, 1960, 74 Stat. 330, provided in relevant part as follows:

Sec. 3(b):

* * * * *

(1) The President shall determine notwithstanding any other provisions of title II, the quota for Cuba for the balance of calendar year 1960 and for the three-month period ending March 31, 1961, in such amount or amounts as he shall find from time to time to be in the national interest: * * *

(2) For the purposes of meeting the requirements of consumers in the United States, the President is thereafter authorized to cause or permit to be brought or imported into or marketed in the United States, at such times and from such sources, including any country whose quota has been so reduced, and subject to such terms and conditions as he deems appropriate under the prevailing circumstances, a quantity of sugar, not in excess of the sum of any reductions in quotas made pursuant to this subsection: *Provided, however,* That any part of such quantity equivalent to the proration of domestic deficits to the country whose quota has been reduced may be allocated to domestic areas and the remainder of such quantity (plus any

part of such allocation that domestic areas are unable to fill) shall be apportioned in raw sugar as follows:

* * * * *

(iii) The balance, including any unfilled balances from allocations already provided, shall be purchased from foreign countries having quotas under section 202(c), * * * in amounts prorated according to the quotas established under section 202(c) * * *.

STATEMENT

This case concerns the statutory authority for a fee imposed by the President on September 26, 1960, on certain importations of sugar from the Dominican Republic. The fee, which was intended to deal with special diplomatic problems concerning the Trujillo regime, expired on March 31, 1961. During the period from September 26, 1960, to March 31, 1961, only three importers paid the fee. In addition to this plaintiff, one other importer brought suit to recover the fee. The suit was, however, dismissed with prejudice at the plaintiff's motion. Stipulation 31–32.[1] The third importer has not brought suit.

Under the Sugar Act of 1948, as amended in 1956 and 1958 (61 Stat. 922, 65 Stat. 318, 70 Stat. 217, 7 U.S.C. 1101 *et seq.*), the Secretary of Agriculture determined for each year the total consumer sugar requirements for the United States and then allocated this total to establish quotas for domestic and foreign

[1] "Stipulation" refers to the Stipulation of Facts which has been filed in this Court, and on the basis of which the decision below was rendered.

areas pursuant to a statutory formula. The limitation on the supply of sugar generally kept the United States price above the world market price. Stipulation 5.

In 1959, 70 per cent of the sugar imported from foreign sources under the Sugar Act formula came from Cuba. Stipulation 5. Concern with the course of the Castro regime led to the enactment on July 6, 1960, of an amendment to the Sugar Act, authorizing the President to reduce the Cuban quota. P.L. 86–592, 74 Stat. 330. To fill the gap caused by the anticipated decrease in the Cuban quota, the amendment authorized the President to permit additional imports, up to the amount of the reduction in the Cuban quota, "at such times and from such sources * * * and subject to such terms and conditions as he deems appropriate under the prevailing circumstances". P.L. 86–592, Section 3(b)(2). The President's authority was, however, subject to the proviso that the additional imports of "replacement" sugar be allocated among the different countries according to a prescribed formula, which followed for the most part the existing Sugar Act formula. P.L. 86–592, Section 3(b)(2).

The President then lowered the Cuban quota, delegating his authority over replacement sugar to the Secretary of Agriculture acting concurrently with the Secretary of State. 25 F.R. 6414 (July 8, 1960).

In August, 1960, the Organization of American States decided to take collective action against the Dominican Republic because of an attempt to assassinate the President of Venezuela, which was thought

to have been instigated by high officials of the Trujillo regime. Stipulation 12. The action decided upon was the breaking of diplomatic relations and a suspension of all arms trade, with a study of the possibility of extending the suspension of trade to other articles. Stipulation 12. On August 26, 1960, the United States severed diplomatic relations with the Dominican Republic. Stipulation 13.

On August 23, 1960, the President requested legislation permitting him to purchase elsewhere replacement sugar which, under Public Law 86–592, was then required to be purchased from the Dominican Republic. Stipulation 13. Both the House and the Senate passed legislation. However, the House bill differed significantly from the Senate bill, and the Congress adjourned before these differences could be resolved in conference. Stipulation 14–15.

While Congress was considering the requested legislation, the Secretary of Agriculture postponed authorization of the importation of replacement sugar from the Dominican Republic, relying upon the President's authority under Public Law 86–592 to permit imports "at such times" as deemed appropriate. Stipulation 11, 13–14. Shortly before the Congress adjourned, the Secretary of Agriculture, with the concurrence of the Secretary of State, permitted importation of replacement sugar from the Dominican Republic in the amounts required by Public Law 86–592 and the Sugar Act. 25 F.R. 9197 (Sep. 27, 1960). However, as a term and condition of such importation, a fee was required of $0.02 per pound

raw value. This fee was later changed to $0.0225, 25 F.R. 13864 (Dec. 29, 1960).

Following promulgation of the initial fee in September, 1960, the Undersecretary of State sent a circular telegram to all United States diplomatic missions in Latin America. Explaining that the President was legally obligated to authorize importation of a specific amount of replacement sugar from the Dominican Republic, the telegram pointed out that the fee imposed as a condition of importation "removes price premium and thus Dominicans will get only same price they could anyway in world market." Stipulation 18. The telegram also explained that imposition of the fee "is in keeping with spirit of San Jose resolution [O.A.S. resolution regarding sanctions against the Dominican Republic]." Stipulation 18. A similar explanation was given to the Venezuelan Embassy when it expressed the concern of the Government of Venezuela regarding the decision to import replacement sugar from the Dominican Republic. Stipulation 18–20.

The authorization to import from the Dominican Republic, together with the import fee, expired by its terms on March 31, 1961. 25 F.R. 13864 (December 29, 1960). On that date, Congress enacted Public Law 87–15, providing that replacement sugar need not be purchased from countries with which the United States is not in diplomatic relations. The next allocation of replacement sugar did not include the Dominican Republic. 26 F.R. 3358, § 820.4 (April 20, 1961). The present provision of the Sugar Act re-

garding replacement sugar requires that no allocation be made to countries with which the United States is not in diplomatic relations. The broad language of Public Law 86–592 regarding the President's authority to prescribe terms and conditions is no longer in the Act. 7 U.S.C. 1158(c), 1112(c)(4).

Plaintiff paid under protest some $6.9 million fees on sugar which it imported from the Dominican Republic during the period here involved. Stipulation 22–29. It then brought this action to recover these payments. The Court of Claims, per Davis, J. (Whitaker, J. dissenting), gave summary judgment for the United States. The court held that imposition of the fee as a condition of importation was authorized by the language of Public Law 86–592 giving the President authority to permit importation of replacement sugar "subject to such terms and conditions as he deems appropriate under the prevailing circumstances."

ARGUMENT

The question involved here is of no recurring importance, and there is no conflict of decisions. Moreover, the decision below is correct. There is accordingly no occasion for review by this Court.

1. The question presented was an outgrowth of special diplomatic problems involving the Trujillo regime during late 1960 and early 1961, combined with the President's lack of authority to deny the Dominican Republic a large share of the sugar importations which had been taken from Cuba. This lack of authority ended on March 31, 1961, when Congress pro-

vided that replacement sugar need not be purchased from countries with which the United States had no diplomatic relations. P.L. 87–15, 75 Stat. 40. The fee attacked in this case expired on the same day, and has not since been renewed. 25 F.R. 13864 (Dec. 29, 1960); 26 F.R. 3358 (April 20, 1961). Moreover, there is no other pending action involving the question presented by this case, and only one other action involving the question is possible (Stipulation 31–32).

2. The judgment of the Court of Claims was correct. The statutory language authorizing imposition of "such terms and conditions as [the President] deems appropriate under the prevailing circumstances" is on its face an extremely broad grant of power. Comparable statutory phrases have been applied liberally by this Court to authorize imposition of terms and conditions only peripherally related to the central purpose of the statute. *United States* v. *Lowden,* 308 U.S. 225; *I.C.C.* v. *Railway Labor Assn.,* 315 U.S. 373. Moreover, Public Law 86–592 clearly involved sensitive matters of foreign relations, an area in which the President has traditionally exercised extensive discretion (see *United States* v. *Curtiss-Wright Corp.,* 229 U.S. 304, 324), including discretion with respect to import duties, embargoes, and the like. See *J. W. Hampton, Jr. & Co.* v. *United States,* 276 U.S. 394, 409; *United States* v. *Curtiss-Wright Export Corp.,* 299 U.S. 304, 322–327; *Field* v. *Clark,* 143 U.S. 649, 680–691.

It is conceded that nothing in the legislative history of Public Law 86–592 is directed to the question

whether the authority to prescribe the terms and conditions of importation included authority to impose a duty eliminating the benefit of the favorable United States price. Petitioner argues, however, that the President's authority must be limited by the purpose of the statute, which was to deal with a foreign policy problem regarding Cuba. Petitioner's contention, which apparently is that Congress intended to preclude the President, in his imposition of terms and conditions, from considering foreign policy problems involving any other country, cannot be accepted. In imposing terms and conditions on the importation of replacement sugar from countries other than Cuba, one would surely expect—absent express statutory prohibition—that the President could take into account foreign policy problems involving countries other than Cuba.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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